

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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VIOLA JUANITA HATCHITT,  
Appellant,  
vs.

UNITED STATES OF AMERICA,  
Appellee.

JUANA SATURNINO HATCHITT,  
Appellant,  
vs.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Upon Appeals from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED  
MAR 4 1946

PAUL P. O'BRIEN,  
CLERK



No. 11205

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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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\*Page numbering appearing at foot of page of original certified Transcript.

In the District Court of the United States in and  
for the Southern District of California, Central  
Division

No. 4235 O'C—Civil

VIOLA JUANITA HATCHITT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 4236 O'C—Civil

JUANA SATURNINO HATCHITT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

AGREED STATEMENT OF THE CASE FOR  
USE ON APPEAL, UNDER RULE 76 OF  
THE RULES OF CIVIL PROCEDURE

The above entitled cases in both of which the United States of America is defendant, and in each of which the same relief is sought, were consolidated for trial and so tried by the above entitled Court. This Agreed Statement of the Case is prepared and agreed to for use on appeal in each case, to wit:

[Endorsed]: Filed Dec. 3, 1945. [2]

[Title of District Court and Cause—No. 4235]

## COMPLAINT

The plaintiff complains of the defendant and for cause of action alleges:

### I.

That she is a citizen of the United States of America and of the State of California; that she is of Indian blood and descent, and is a duly enrolled and recognized member of the Palm Springs or Agua Caliente Band of Mission Indians of California; that she was born in the year 1921 and all her life has resided or maintained a legal residence upon the Palm Springs Reservation of said Band of Indians.

### II.

That the Secretary of the Department of Interior of the United States, acting under the authority of the Act of Congress of January 12, 1891 (26 Stat. L. 712-714) as amended June 25, 1910 (36 Stat. L. 855-865) and March 2, 1917 (39 Stat. L. 976), did, on or about the 7th day of June, 1921, conclude and determine that, in his [3] opinion, the aforesaid Mission Indians of California were so far advanced in civilization as to be capable of owning and managing land in severalty, and did thereafter, on or about the 1st day of July, 1921, appoint one H. E. Wadsworth as Special United States Allotting Agent at Large for the Mission Indian Reservations of California and said appointment became effective on said date; that in order to carry into effect the aforesaid opinion and determination of the See-

retary of the Interior the said H. E. Wadsworth accepted, qualified and became the Special United States Allotting Agent at Large for the Mission Indian Reservations of California with authority of law in him vested to make allotments of lands in severalty to said Indians; that acting pursuant to said authority said Special Allotting Agent surveyed and classified, or caused to be surveyed and classified, the lands of the Palm Springs or Agua Caliente Reservation of Mission Indians of California in order that allotments thereof in severalty should be made by said Special Allotting Agent to the members of said Band of Mission Indians in accordance with the Statutes of the United States therefor provided.

### III.

That thereafter, on or about the 21st day of June, 1923, said Special Allotting Agent, acting pursuant to instructions and directions given him by the Secretary of the Interior and the Statutes of the United States therefor provided, did allot to plaintiff the following described lands, to-wit:

Parcel (a) Homesite: Lot 27, Section 14, Township 4 South, Range 4 East, S.B.M., comprising two (2) acres:

Parcel (b) Irrigated:  $N\frac{1}{2}$   $NE\frac{1}{4}$   $SE\frac{1}{4}$   $SE\frac{1}{4}$  all in Section 22, Township 4 South, Range 4 East, S.B.M., comprising five (5) acres; and

Parcel (c) Desert:  $NE\frac{1}{4}$   $NE\frac{1}{4}$  all in Section 24, Township 4 South, Range 4 East S.B.M., comprising forty (40) acres, totaling 47 acres, as shown by said

Special Allotting Agent's [4] Schedule of June 21, 1923, said lands being a part of the Palm Springs Mission Indian Reservation in Riverside County, California; that thereafter said Special Allotting Agent issued and delivered to plaintiff a certificate of allotment to said lands under which plaintiff became entitled to an allotment trust patent thereto and to the sole and exclusive possession and use thereof.

#### IV.

That thereafter, on or about the 26th day of October, 1923, said Special Allotting Agent, acting under the authority vested in him by the Secretary of the Interior and the Statutes of the United States therefor provided, did state and represent to plaintiff's mother, Juana Saturnino Hatchitt, and to plaintiff that the issuance and delivery of said certificate of allotment entitled plaintiff to enter upon and take possession of the lands allotted to her, and that said certificate of allotment was and would be evidence of plaintiff's right to possess, hold and improve said lands, pending the issuance of a trust patent therefor to her; that thereafter plaintiff, believing and relying upon said certificate and the aforesaid statements and representations of said Special Allotting Agent, did improve said lands by erecting thereon buildings and other permanent structures and improvements suitable for use for residential, commercial and business purposes at a cost in excess of the sum of Twenty-Five Thousand Dollars (\$25,000.00), and that she would not have made said improvements and would not have expended said sum

upon said lands excepting for said conduct, statements and representations of the Secretary of the Interior and said Special Allotting Agent.

## V.

That thereafter, on or about the 5th day of January, 1927, the Secretary of the Interior did attempt to withdraw the allotments made by said Special Allotting Agent to the several members of the Palm Springs Band of Mission Indians in the year 1923, and thereupon did instruct and direct said Special Allotting Agent to make re-allotments [5] of the lands previously surveyed and classified to such members of said Band of Indians as had previously made or should thereafter make voluntary selections of allotments from said lands; that thereafter, acting pursuant to said instructions and directions and at the request of plaintiff's mother, Juana Saturnino Hatchitt, said Special Allotting Agent, on or about the 9th day of May, 1927, did realLOT to plaintiff the above described lands and on said date did issue and deliver to plaintiff and plaintiff accepted a certificate of allotment to the above described lands, under which plaintiff became entitled to an allotment trust patent thereto and to the sole and exclusive possession and use thereof.

## VI.

That by reason of the aforesaid Acts of Congress and the aforesaid acts, conduct, proceedings, statements and representations of the Secretary of the Interior and said Special Allotting Agent and the

aforesaid matters, facts and things, plaintiff became and at all times after the 21st day of June, 1923, has been, and is now, the equitable owner of the above described lands with the improvements she placed thereon, and at all such times has been and is now entitled to an allotment trust patent thereto and to the sole and exclusive possession and use and enjoyment thereof free and clear of all claims and demands of the defendant whatsoever.

### VII.

That by reason of the aforesaid Acts of Congress and the aforesaid acts, conduct, proceedings, statements and representations of the Secretary of the Interior and said Special Allotting Agent, it became and at all times since the 21st day of June, 1923, has been, and is now, the mandatory duty of the Secretary of the Interior to issue to plaintiff a trust patent to the above described lands, but notwithstanding said mandatory duty the Secretary of the Interior has at all such times failed and neglected to issue said trust patent to plaintiff. [6]

### VIII.

That by reason of the aforesaid Acts of Congress and the aforesaid acts, conduct, proceedings, statements and representations of the Secretary of the Interior and said Special Allotting Agent and the aforesaid matters, facts and things, the defendant is estopped to question, or deny, plaintiff's equitable title to the above described lands, or her right to an allotment trust patent thereto, or her right to the

sole and exclusive possession, use and enjoyment thereof.

Wherefore, plaintiff prays:

1. That it be adjudged, ordered and decreed by this Court:

(a) That plaintiff is and was at all times mentioned in this complaint a duly enrolled and recognized member of the Palm Springs or Agua Caliente Band of Mission Indians of California.

(b) That on the 21st day of June, 1923, the United States of America allotted, and on the 9th day of May, 1927, reallocated in severalty to plaintiff, Viola Juanita Hatchitt, the lands described in Paragraph III of this complaint, and that plaintiff is entitled to an allotment trust patent to said lands from the United States of America.

(c) That the trust period of twenty-five years provided in the Mission Indian Act of 1891 (26 Stat. L. 712), during which the lands allotted and reallocated to plaintiff shall remain in trust shall begin to run from the 21st day of June, 1923.

2. That a copy of the judgment and decree of this Court be certified to the Secretary of the Interior of the United States of America.

3. That plaintiff have such other and further



relief as justice and equity may require, including the costs of this action.

JOHN W. PRESTON, OLIVER O.  
CLARK, DAVID D. SALLEE and  
ROBERT A. SMITH

By JOHN W. PRESTON,  
Attorneys for Plaintiff.

(Duly verified.)

[Endorsed]: Filed Feb. 9, 1945. [7]

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The complaint in action No. 4236 raises the identical issues and prays for the same relief as the above complaint, with the exception of the property therein described, said property description in Action No. 4236 being as follows:

Parcel (a) Homesite: Lot 26, Section 14, Township 4 South, Range 4 East, S.B.M., comprising two (2) acres;

Parcel (b) Irrigated: S $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 35, Township 4 South, Range 4 East, S.B.M., comprising five (5) acres; and

Parcel (c) Desert: NW $\frac{1}{4}$  NE $\frac{1}{4}$  all in Section 24, Township 4 South, Range 4 East S.B.M., comprising forty (40) acres. Said lands being a part of the Palm Springs Mission Indian Reservation in Riverside County, California. [8]

[Title of District Court and Cause—No. 4235.]

## ANSWER TO COMPLAINT

Comes Now United States of America and for its Answer to plaintiff's Complaint herein, admits, denies and alleges as follows:

### FIRST DEFENSE

#### I.

Admits the allegations stated in Paragraph I.

#### II.

Admits that on or about June 7, 1921, the Secretary of the Interior appointed H. E. Wadsworth as Special Allotting Agent at Large for the Mission Indian Reservations in California; that H. E. Wadsworth was duly qualified and authorized to act as such Special Allotting Agent; and that Special Allotting Agent H. E. Wadsworth caused the lands of the Palm Springs Indian Reservation involved in this action to be surveyed and classified. The defendant denies all other averments stated in Paragraph II. [9]

#### III.

Admits that the land described in Paragraph III of the Complaint lies within the exterior bounds of the Palm Springs Indian Reservation. Admits that Special Allotting Agent H. E. Wadsworth prepared an instrument entitled "Selection for Allotment" containing the name of Viola J. Hatchitt and describing the lands described in Paragraph III of the Complaint and that the instrument was delivered to Viola J. Hatchitt. De-

fendant denies all other averments stated in Paragraph III.

#### IV.

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments stated in Paragraph IV and therefore denies the same.

#### V.

Admits that on or about May 9, 1927, Special Allotting Agent H. E. Wadsworth did issue and deliver to plaintiff an instrument entitled "Selection for Allotment" describing the lands described in Paragraph III of the Complaint and denies all other allegations stated in Paragraph V.

#### VI.

Denies the allegations stated in Paragraph VI.

#### VII.

Admits that no trust patent has been issued to plaintiff and denies all other allegations stated in Paragraph VII.

#### VIII.

Denies the allegations stated in Paragraph VIII.

### SECOND DEFENSE

#### I.

That on or about June 7, 1921, the Secretary of the Interior duly appointed H. E. Wadsworth as Special Allotting Agent at Large for the Mission Indian Reservations in California and authorized

and directed him to prepare schedules of selections for allotment on a number of those reservations, including the Palm Springs Indian Reservation.

## II.

Pursuant to his instructions, Special Allotting Agent H. E. Wadsworth caused a portion of the land in the Palm Springs Indian Reservation, including the lands involved in this action, to be surveyed and classified.

## III.

Special Allotting Agent H. E. Wadsworth requested Juana S. Hatchitt, plaintiff's mother, as well as all other adult members of the Band, to choose the land each of them desired to have listed as his respective selection for allotment. Most of the adult members of the Band expressly refused to choose any lands to be listed as their respective selections for allotment. Upon the refusal of members of the Band to make voluntary selections, Special Allotting Agent Wadsworth arbitrarily designated specific tracts of land as the respective selections of those members of the Band who had refused voluntarily to select land and Special Allotting Agent Wadsworth listed the lands arbitrarily selected by him on a schedule of selections for allotment. The schedule contained fifty names representing all of the enrolled members of the Band and a description of the land designated as the selection of each Indian listed.

## IV.

That on or about June 21, 1923, Special Allotting Agent H. E. Wadsworth transmitted the schedule of selections for allotment to the Commissioner of Indian Affairs in Washington, D. C.

## V.

That on or about June 22, 1923, Special Allotting Agent H. E. Wadsworth prepared an instrument entitled "Selection for Allotment" for each of the fifty Indians named on the 1923 schedule of selections for allotment. Special Allotting Agent H. E. Wadsworth signed each of said certificates and offered the certificates for delivery to the selectees named therein and in the case of minors, to the parents or guardians of such selectees. Most of the members of the Band refused to accept the respective certificate in which he or she was named.

## VI.

That because of the protests of the Palm Springs Indians against allotment and because the selections listed for them on the 1923 schedule had been arbitrarily selected by Special Allotting Agent H. E. Wadsworth and for other reasons, the Secretary of the Interior, on or about January 5, 1927, superseded the 1923 schedule of selections for allotment by ordering that a schedule of selections for allotment for the Palm Springs Indian Reservation be prepared to include the names of only those Indians who consented in writing to allotment.

## VII.

That in March and April, 1927, written consent for allotment was obtained from twenty members of the Palm Springs Indian Band, including Viola J. Hatchitt, who consented thereto through her mother, Juana S. Hatchitt.

## VIII.

That on or about May 9, 1927, Special Allotting Agent H. E. Wadsworth concluded the preparation of a schedule of selections for allotment for the Palm Springs Indian Band containing the names of twenty-four Indians and a description of the land designated as the selection of each Indian listed, and caused the 1927 schedule of selections for allotment to be forwarded through the office of the District Superintendent at Muskogee, Oklahoma, to the Commissioner of Indian Affairs in Washington, D. C.

## IX.

That the 1927 schedule of selections for allotment remained pending in the Office of Indian Affairs in connection with suggested corrections, modifications and revisions as to the rights of certain of the selectees to receive allotments, as to the rights of certain of the selectees with respect to the lands selected by them and as to the correctness of the surveys of the lands described in the schedule. That in the months of June and October, 1928, and while the 1927 schedule of selections for allotment was pending in the Office of Indian Affairs, the Commissioner of Indian Affairs [12] submitted memo-

randa, endorsed by the General Land Office and addressed to the Secretary of the Interior, recommending that the Secretary approve the schedule of selections for allotment of the Mission Creek Reservation, the La Jolla Reservation and the Rincon Reservation, all Mission Indian Reservations. The Secretary approved the respective schedules of selections for allotment of the Mission Creek Reservation, the La Jolla Reservation and the Rincon Reservation, and ordered trust patents prepared and delivered to the selectees named on the approved schedules.

## X.

Trust patents were prepared and delivered to the selectees named in the La Jolla and Rincon Schedules of selections for allotments. Various occupants of lands within the La Jolla and Rincon Reservations refused to surrender possession to the Indian trust patentees and on April 13, 1929, the United States of America was compelled to institute in this Court suit entitled "United States of America, as Trustee of the Allottees of the La Jolla and Rincon Reservations vs. Joseph Albanes, et al., No. A-2-M-Equity," to enjoin interference with the trust patentees. The defendants in that suit challenged the authority of the Secretary to allot any of the Mission Indian Reservations. The litigation was not completed until July 15, 1931, when final judgment was entered in favor of the United States and the Indian trust patentees. While that action was pending, the 1927 schedule of selections for

allotment of the Palm Springs Band of Indians remained in abeyance in the Office of Indian Affairs.

## XI.

Commencing in 1933, preliminary steps were taken which ultimately resulted in the enactment of the Indian Reorganization Act of June 18, 1934, 48 Stat. 954, 25 U.S.C. 461 et seq., under which the allotment in severalty of Indian tribal lands was forbidden providing a majority of the Indians on the Reservation did not vote against the application of the Act. A majority of the qualified voting members of the Palm Springs Indian Band voted against the Indian Reorganization Act. Pending the vote of the Indians under the [13] Indian Reorganization Act, the 1927 schedule of selections for allotment remained in abeyance in the Office of Indian Affairs.

## XII.

Thereafter, in 1935, the Secretary of the Interior sought the solution of the Palm Springs Indian problem through legislation and pending the consideration of the matter by Congress, the 1927 schedule remained in abeyance in the Office of Indian Affairs.

## XIII.

That on May 8, 1936, eighteen actions ordinarily described as the St. Marie cases were instituted in this Court against the United States by members of the Palm Springs Indian Band to compel issuance of trust patents to land in the Palm Springs



Indian Reservation. One of the actions was entitled "Viola J. Hatchitt, Minor by Juana S. Hatchitt, Prochein Ami, v. United States of America, Trustee et al, No. Eq. 1209-M." The St. Marie cases ended in favor of the United States on October 14, 1940 (24 F. Sup. 237) and on appeal was affirmed (108 F. 2d 878 (CCA 9, 1940)) and certiorari was denied by the Supreme Court because petition was filed out of time (see 311 U. S. 652). Pending final determination of the St. Marie cases, the 1927 schedule of selections for allotment remained in abeyance in the Office of Indian Affairs.

#### XIV.

On December 24, 1940, Lee Arenas, a member of the Palm Springs Band, instituted an action in this Court entitled "Lee Arenas v. United States, No. 1321-O'C." Judgment was granted in favor of the United States and on appeal the Circuit Court for the Ninth Circuit affirmed (137 F. 2d 199). Certiorari was granted by the Supreme Court of then United States and on May 22, 1944, its opinion was rendered, reversing the decision of the Circuit Court of Appeals and remanding the case for further proceedings (322 U. S. 419). Pending the opinion of the Supreme Court, the 1927 schedule of selections for allotment remained in abeyance in the Office of Indian Affairs. [14]

#### XV.

Thereafter, the 1927 schedule of selections for allotment was for the first time submitted to the

Secretary of Interior for his consideration and determination as to whether the 1927 schedule should be approved or disapproved. On December 14, 1944, the Secretary of Interior, through the Assistant Secretary of Interior, after full study and consideration of the schedule and related matters, disapproved the 1927 schedule of selections for allotment of the Palm Springs Indian Reservation. The living selectees and probable heirs of the selectees listed on that schedule, including plaintiff, were promptly notified of the disapproval.

### THIRD DEFENSE

#### I.

That on or about July 19, 1937, Viola J. Hatchitt instituted an action in this Court entitled therein "Viola J. Hatchitt, Minor, by Juana S. Hatchitt, Prochein Ami, v. United States of America et al, No. Eq. 1209-M." A certified copy of the Complaint in that action is attached hereto, marked Exhibit A, and made a part hereof.

#### II.

United States of America answered the Complaint by filing its Answer thereto on or about November 15, 1937. A certified copy of the Answer is attached hereto, marked Exhibit B, and made a part hereof.

#### III.

That as more fully appears from Exhibit A, the cause of action therein alleged was an action to cause it to be certified by this Court to the Secre-

tary of Interior that a trust patent in fee in severalty as to the lands described in Paragraph III of the Complaint should be issued out of the Department of Interior to and in favor of this plaintiff.

That the lands described in Paragraph III in action No. Eq. 1209-M are the same lands as are described in Paragraph III of the Complaint in action No. 4235-O'C. [15]

#### IV.

The case of *Viola J. Hatchitt v. United States of America*, No. Eq. 1209-M was later numbered Eq. 1209-Y and consolidated for trial with another action similar in nature entitled "*Genevieve F. St. Marie v. United States of America*, No. Eq. 918-Y" and sixteen other actions similar in character were also consolidated for trial. These cases are commonly known as the St. Marie cases.

#### V.

The St. Marie cases, including action No. Eq. 1209-Y, were tried before this Court sitting without a jury and the Court having heard the evidence and considered the arguments of counsel, made and entered its Final Decree on August 22, 1938, adjudging and decreeing that plaintiff had acquired no right to a trust patent as to the lands claimed by plaintiff in action No. Eq. 1209-Y, which lands are the same as those described in Paragraph III of the Complaint herein. A certified copy of the Final Decree in action No. Eq. 1209-Y is attached hereto, marked Exhibit C, and made a part hereof.

## VI.

Viola J. Hatchitt appealed from the Final Decree, Exhibit C, and the Circuit Court of Appeals for the Ninth Circuit affirmed (108 F. 2d 876).

Thereafter, the Supreme Court of the United States on petition for a Writ of Certiorari to review the opinion of the Circuit Court of Appeals, denied the Writ, the petition having been filed out of time (311 U. S. 652).

## VII.

The Final Decree of this District Court in action No. Eq. 1209-Y has become and is final and binding and conclusive upon the parties to the present action and the subject matter thereof and the Final Decree of this Court in action No. Eq. 1209-Y is *res judicata* as to all matters [16] alleged in the present Complaint, No. 4235-O'C.

Wherefore, defendant demands judgment dismissing this action with costs.

Dated: This 5th day of April, 1945.

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

JAMES A. MURRAY

Special Assistant to the Attorney General

MARVIN J. SONOSKY

Special Assistant to the Attorney General

Attorneys for Defendant

United States of America [17]

EXHIBIT "A"

In the District Court of the United States for  
the Southern District of California, Central  
Division

Equity No. 1209-M

VIOLA J. HATCHITT, minor, by JUANA S.  
HATCHITT, Prochein Ami,  
Complainant

v.

UNITED STATES OF AMERICA, Trustee, MA-  
GUEL SATURNINO and FRANK COUR-  
TEMANCHI

Defendants

BILL OF COMPLAINT

To the Honorable, the Judges of the District Court  
of the United States for the Southern District  
of California, Central Division:

The complainant Viola J. Hatchitt, minor, by  
her next friend, Juana S. Hatchitt, hereby files this  
her bill of complaint, by her attorney, and respect-  
fully shows to the court as follows:

1. That she is sixteen years of age, and the  
daughter of Juana S. Hatchitt, Indian of the Agua  
Caliente or Palm Springs Band of Mission Indians,  
and the recognized head of the Indian family of  
said band, and the person designated by law to  
make selection for her of the land for allotment;  
that complainant and her mother are duly enrolled

and recognized members of the said band, and reside upon the Palm Springs Reservation in Riverside County, California, and are each of them citizens of the United States and the State of California.

2. That the Secretary of the Interior of the United States acting under authority of the Act of Congress of January 12, 1891 (26 St. L. 712-14) as amended June 25, 1910 (36 St. L. 855-63) and March 2, 1917 (39 St. L. 975) did, on or about the 7th day of June 1921, conclude and determine that, in his opinion, the aforesaid Mission Indians of California, were so far advanced in civilization [18] as to be capable of owning and managing land in severalty, and that he did thereafter and thereunder, cause to be made allotments of lands to such Indians on said reservations, and among said Indians was your complainant, who made selection of the hereafter described lands, which the Secretary of the Interior of the United States did allot or cause to be allotted to her by causing the same to be recorded upon the official schedule of allotment, and by issuing to the complainant a certificate of selection to said lands on May 9, 1927 authorizing her to enter upon and take possession of said allotted lands as hereinafter more fully set out; that she did, in pursuance of the aforesaid authority, then and there enter upon and take possession of said lands; that the Secretary of the Interior acting under and by virtue of the authority of the aforesaid acts of Congress did, on or about

the 7th day of June 1921, appoint one Harry E. Wadsworth a Special United States Allotting Agent at Large for the Mission Indian Reservations of California, and that said appointment became effective July 1, 1921; that in order to carry into effect the aforesaid opinion of the Secretary of the Interior, the said Harry E. Wadsworth, accepted, qualified and became the Special United States Allotting Agent at Large for the Mission Indian Reservation of California with authority of law in him vested to make allotments of lands to said Indians; that acting pursuant to said authority the Special Allotting Agent surveyed and classified, or caused to be surveyed and classified, the lands of the Agua Caliente, or Palm Springs Reservation of the Mission Indian Reservations of California; that thereafter on May 9, 1927, the said Special Allotting Agent, acting under the authority and direction of the Secretary of the Interior of the United States, and the Statutes of the United States therefor provided, did allot to your complainant the following described lands, to wit: [19]

Homesite Lot No. 27, Sec. 14, Twp. 4 S., R. 4 E. 2 Acres, Irrigated Tract, N $\frac{1}{2}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 22, Twp. 4 S., R. 4 E., 5 Acres Desert Land, NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 24, Twp. 4 S., R. 4 E., 40 Acres all east of the San Bernardino Meridian in California, and contained in the said Allotting Agent's schedule of May 9, 1927, said lands being part of the Agua Caliente or Palm Springs Mission Indian Reservation in Riverside County, Cali-

fornia; that under and by virtue of said allotment the said Special Allotting Agent issued a certificate to your complainant under which she became entitled to the sole use and benefit of the lands described thereunder, which are the same lands your complainant's mother, Juana S. Hatchitt had previously elected to take for complainant.

3. That, notwithstanding the facts herein alleged, and in derogation of the rights of your complainant, the defendants Maguel Saturnino and Frank Courtemanchi, did, soon after the aforesaid allotment, take possession of and now hold and occupy the following described land: Irrigated Tract, N $\frac{1}{2}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 22, Twp. 4 S., R. 4 E., 5 acres, east of the San Bernardino Meridian in California, being a part of the lands described in the aforesaid allotment to the complainant; that said defendants are trespassers upon the said land; that the defendants have since 1927 deprived and continue to deprive the complainant of the occupancy, use and benefit of the said land, to her loss, damage and injury in the sum of one thousand (\$1,000) dollars, for which sum she asks damages of the said two defendants; that your complainant has requested the defendants to remove from said lands and they refused and continue to refuse so to do, and now hold, use and occupy the said lands to their possession and benefit.

4. That the authority for bringing this suit and naming the United States of America as a party



defendant rests under the Act of Congress of August 15, 1894 (28 St. L. 305) and as amended by Act of February 6, 1901 (31 St. L. 760).

5. That your complainant has many times made requests upon [20] the proper agents of the United States to secure unto her an Allotment Trust Patent for the lands herein described, and which has been allotted to her as herein alleged; that she is lawfully entitled to said patent under and by virtue of the Act of Congress of January 12, 1891 (26 St. L. 712) as amended March 2, 1917 (39 St. L. 975); that said Allotment Trust Patent has not, up to this date, been issued to her by the United States of America, and that she has a vested right to the lands and patent as herein alleged.

6. That your complainant is without adequate remedy at law in the premises; that by reason of the defendants continuing trespass she suffers great and irreparable injury and damages; that she is without remedy unless given relief by this Honorable Court by a writ of injunction restraining defendants Maguel Saturnino and Frank Courtemanchi from further and continuing trespass upon the aforesaid lands.

7. That all the defendants, except the United States of America, are citizens of the State of California, residents in Riverside County, State of California, and within the jurisdiction of this Court.

Wherefore, complainant prays:

(1) That writs of subpoena issue, directed to each of the defendants commanding them and each of them to appear and make answer hereto.

(2) That it be adjudged, ordered and decreed by this Court:

(a) That the United States allotted to the complainant on May 9, 1927, for her sole use and benefit, the lands above described in this her bill of complaint.

(b) That the complainant is entitled to an Allotment Trust Patent to the said lands from the United States of America.

(c) That the defendants Maguel Saturnino and Frank Courtemanchi [21] are unlawfully using and occupying said lands.

(d) That a temporary order of injunction issue out of this court against Maguel Saturnino and Frank Courtemanchi, defendants, their agents, employees, servants and attorneys, enjoining and restraining them, and each of them, from going upon, entering, using and occupying the said described lands, or any part thereof, said injunction to be made permanent upon final hearing.

(3) That the complainant be awarded damages against the defendants Maguel Saturnino and Frank Courtemanchi in the sum of one thousand (\$1,000) dollars, to be assessed against and apportioned to each upon final hearing.

(4) That a copy of the judgment of this court be certified to the Secretary of the Interior of the United States.

(5) That complainant have such other and further relief as justice and equity may require, including costs of this suit.

(Signed) THOMAS L. SLOAN

Attorney for Complainant

District of Columbia—ss.

Thomas L. Sloan, being first duly sworn, deposes and says that he is the attorney in the above entitled action, that he has read the foregoing bill of complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

THOMAS L. SLOAN

Subscribed and sworn to before me this 16th day of July A. D. 1937.

[Seal]

FLORENCE A. SMITH

Notary Public

My commission expires April 15, 1942. [23]

## EXHIBIT B

In the District Court of the United States In and For  
the Southern District of California, Central  
Division

No. 1209-M Equity

VIOLA J. HATCHITT, Minor, By JUANA S.  
HATCHITT, Prochein Ami,  
Complainant,

vs.

UNITED STATES, Trustee, et al.,  
Respondents.

## ANSWER TO BILL OF COMPLAINT

Come Now the United States of America, Trustee, and Maguel Saturnino and, in answer to the Bill of Complaint on file herein, admit, deny and allege as follows:

## I.

In answer to Paragraph 1 said respondents admit each and every allegation contained therein.

## II.

Answering Paragraph 2, said respondents deny that the Secretary of the Interior on or about the 7th day of June, 1921, or at any other time, allotted or caused to be allotted lands on the Palm Springs Indian Reservation to the Agua Caliente or Palm Springs Band of Mission Indians in California; deny that the Secretary of the Interior allotted or caused to be allotted to said complainant or to be

recorded upon an official schedule of allotment the lands described in said bill of complaint; deny that the Secretary of the Interior issued to said complainant a certificate of selection on May 9, 1927, or at any other time, authorizing her to enter upon and take possession of the alleged allotted lands; deny that said complainant did then and there enter upon and take possession of said lands; deny that said Harry E. Wadsworth was vested with [24] authority to make allotments of lands to the Agua Caliente or Palm Springs Band of Mission Indians or any other band or tribe of Indians; admit that said Harry E. Wadsworth surveyed and classified, or caused to be surveyed and classified, certain lands of the Agua Caliente or Palm Springs Mission Indian Reservation of California, but deny that said survey and classification were pursuant to authority vested in him to make allotments of lands to such Indians; deny that upon May 9, 1927, or at any other time, said Harry E. Wadsworth, or any other person, allotted to the complainant the lands described in said paragraph, or any other lands; deny that said Harry E. Wadsworth, or any other person, issued a certificate to said complainant which entitled her to the use of said lands.

### III.

In answer to Paragraph 3, said respondents deny that said respondent Maguel Saturnino, soon after the alleged allotment or at any other time, took possession of, held or occupied the land described in said paragraph and on the contrary, allege the

fact to be that said land since time immemorial has been used as tribal land; deny that said respondents are trespassers upon said land; deny that said respondents have at any time deprived complainant of the occupancy, use or benefit of said land to her injury or damage in the sum of One Thousand Dollars (\$1000.00) or at all.

#### IV.

In answer to Paragraph 5 said respondents deny that complainant is lawfully entitled to the patent described in said paragraph, under and by virtue of the Act of Congress on January 12, 1891 (26 Stat. 712) as amended, March 2, 1917 (39 Stat. 975), or at all; deny that said [25] complainant has a vested right or any right whatsoever to the lands and patent as alleged in said Bill of Complaint.

#### V.

In answer to Paragraph 6 said respondents deny that said complainant is without adequate remedy at law; deny that said complainant has suffered great and irreparable injury and damages; deny that she is without remedy or relief.

As a Second, Further and Distinct Answer to the Bill of Complaint on File Herein, Said Respondents Respectfully Show:

#### I.

That the members of the Agua Caliente or Palm Springs Band of Mission Indians of California at all times mentioned herein have been and now are wards of the United States of America; that said

band of Indians has been since 1897 and now is resident upon the Agua Caliente Indian Reservation set aside for its occupancy and use by Executive and Congressional decree; that the legal title of said reservation is held in trust by the United States for said band of Indians and that said lands at all times have been, and now are, tribal lands.

## II.

That in 1891 the Congress of the United States passed a statute (26 Stat. 712), as amended (39 Stat. 975) authorizing the Secretary of the Interior to make allotments of land to the Mission Indians of California whenever any of said Indians were, in his opinion, so advanced in civilization as to be capable of owning land in severalty; that said statute, after establishing the administrative machinery for the making of allotments, specifically provides that allotments are subject to approval by the Secretary of the Interior. [26]

That on June 7, 1921, pursuant to statutory authority, the Secretary of the Interior appointed Harry E. Wadsworth Special United States Allotting Agent at Large; that said Allotting Agent was authorized and directed to prepare a tentative allotment schedule on behalf of said Agua Caliente or Palm Springs Band of Mission Indians, for submission to the Secretary of the Interior; that when said Allotting Agent, in 1923, attempted to prepare a tentative allotment schedule large numbers of the Indians, who were opposed to the allotment system, refused to make selections of land for allotment;

that thereupon said Allotting Agent, pursuant to his instructions, arbitrarily selected lands for those Indians refusing to make voluntary selections and placed said selections on the tentative allotment schedule; that the Secretary of the Interior refused to approve said tentative allotments or any one of them;

That in 1927 the Secretary of the Interior directed said Allotting Agent to prepare another tentative allotment schedule for those members of said Palm Springs band of Indians who desired to receive allotments; that said tentative allotment schedule was prepared and certificates of selection issued to each member of said band of Indians voluntarily making a selection; that said tentative allotment schedule and said certificates of selection were submitted to the Secretary of the Interior for approval as required by law; that the Secretary of the Interior refused and does now refuse to approve said tentative allotments or any one of them, and refused and does now refuse to issue trust patents to any of said selectors, including said complainant.

That said complainant in 1927, at the time of the preparation of the second tentative allotment schedule, desired to select the lands described in her bill of complaint; that a certificate of selection was issued, covering [27] said lands.

That this tentative allotment to said complainant was never approved by the Secretary of the Interior as required by law;



## IV.

That none of the members of the Agua Caliente Band of Mission Indians, including said complainant, changed his or her position because of the making of said tentative allotments; that as a matter of fact the conditions on the reservation in respect to the lands tentatively allotted were precisely the same after the tentative allotments as they were before; that said complainant has never been and is not now in possession of the irrigated tract or the desert land described in her complaint; that to the contrary, said lands have been at all times and now are tribal lands and used as such.

For a Third, Further and Distinct Answer to the Bill of Complaint on File Herein, Said Respondents Respectfully Show:

That the facts set forth in said Bill of Complaint are not sufficient to state a cause of action in equity.

As a Fourth and Distinct Answer to the Bill of Complaint, Said Respondent Maguel Saturnino Respectfully Shows:

That said cause of action against said respondent, if any there be, is barred by the Statute of Limitations in that said alleged cause of action is for a trespass upon or injury to real property and has not been commenced within three years from the date of the alleged trespass as required by Section 347, Title 25 U.S.C. and Section 338 of the Code of Civil Procedure of the State of California. [28]

Wherefore, said respondents, and each of them,

pray that complainant takes nothing by her action herein and that respondents have judgment, together with costs herein incurred; and for such other and further relief as may be proper in the premises.

Dated: November 15, 1937.

BEN HARRISON

United States Attorney,

CARL EARDLEY

Assistant U. S. Attorney,

Attorneys for Respondents United States of America, Trustec, Maguel Saturnino and Frank Courtemauchi. [29]

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EXHIBIT C

In the District Court of the United States In and  
For the Southern District of California, Central Division

No. Eq.-1209-Y

VIOLA J. HATCHITT, Minor, By JUANA S.  
HATCHITT, Prochein Ami,  
Complainant,

v.

UNITED STATES OF AMERICA, Trustee, and  
MAGUEL SATURNINO,  
Respondents.

FINAL DECREE

This cause having been heard on February 23, 1938, having been argued by counsel and submitted

on briefs; and the Court having announced its decision and separate Findings of Fact and Conclusions of Law having been submitted, signed and filed:

It Is Ordered, Adjudged and Decreed that the complainant take nothing by her action; and

It Is Further Ordered that neither party recover costs of suit. Exception to complainant as to both findings and judgment.

Dated: August 22, 1938.

LEON R. YANKWICH

United States District Judge

Approved as to Form as provided in Rule 44,  
August 19, 1938.

THOMAS L. SLOAN and

G. M. GANNON,

By THOMAS L. SLOAN

Attorneys for Complainant.

[Endorsed]: Filed April 5, 1945. [30]

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The Answer of the United States of America in Action No. 4236, makes the same admissions and the same denials and pleads the same special defenses found in the above Answer.

[Title of District Court and Cause—No. 4235.]

NOTICE AND MOTION FOR SUMMARY  
JUDGMENT

To: Viola Juanita Hatchitt, Plaintiff, and John W. Preston, Oliver O. Smith, David D. Sallee and Robert A. Smith, her attorneys, 712 Rowan Building, 458 South Spring Street, Los Angeles 13, California.

NOTICE

You and Each of You Will Please Take Notice that on the 16th day of April, 1945, at 10:00 o'clock A.M. thereof, or as soon thereafter as counsel may be heard, before the Honorable J. F. T. O'Connor, Judge of the District Court in his courtroom, United States Post Office and Courthouse Building, Los Angeles, California, defendant will move the Court that Summary Judgment be entered against the plaintiff and in favor of defendant in accordance with Rule 56 Federal Rules of Civil Procedure.

MOTION

Comes Now defendant United States of America, by Eugene D. Williams, James A. Murray and Marvin J. Sonosky, its attorneys, and moves this Honorable [32] Court for its Order entering its judgment dismissing the Complaint herein, on the ground that the parties to this action are bound and concluded as to the subject matter of this action by the decree entered August 22, 1938, in the case entitled *Viola Juanita Hatchitt v. United States*, No. Eq. 1209-Y in this court.

This motion will be based upon the records, pleadings and files of the above-entitled action and upon the records, pleadings and files and proceedings in the case of *St. Marie v. United States*, No. Eq. 918-Y and *Viola Juanita Hatchitt v. United States*, No. Eq. 1209-Y, and filed in this District Court.

Dated: This 5th day of April, 1945.

EUGENE D. WILLIAMS

Special Assistant to the  
Attorney General

JAMES A. MURRAY

Special Assistant to the  
Attorney General

MARVIN J. SONOSKY

Special Assistant to the  
Attorney General  
Attorneys for Defendant  
United States of America

## MEMORANDUM OF POINTS AND AUTHORITIES

Rule 56, Federal Rules of Civil Procedure.

*Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381; 84 Law. Ed. 1263.

*Estate of Harrington*, 147 Cal. 124; 81 Pac. 546.

*Borges v. Hellman*, 29 Cal. App. 144; 154 Pac. 1075.

*Bank of America National Trust & Savings As-*

sociation v. McLaughlin, 22 Cal. 2d 411; 71 Pac. 2d 291; 72 Pac. 554.

Phillips v. Patterson, 34 Cal. App. 2d 481; 93 Pac. 2d 807.

[Endorsed]: Filed April 5, 1945. [33]

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Defendant United States of America filed a like motion on like grounds in Action No. 4236.

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[Title of District Court and Cause—No. 4325.]

## OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff in the above entitled cause and for opposition to motion of defendant for summary judgment herein, specifies as follows:

### I.

That on the 14th day of May, 1945, this Court duly gave and caused to be entered a final judgment and decree in the case of Lee Arenas vs. United States of America, action No. 1321 O'C Civil, in which the Court determined that it was the duty of the Secretary of the Department of interior now, and ever since March 2, 1917, has been, to allot in severalty the lands belonging to the Palm Springs or Agua Caliente Band of Mission Indians to the eligible members of said Band.

## II.

That pursuant to the provisions of said Act of March 2, 1917, the Secretary of the Department of Interior did on June 21, 1923, and [35] again on May 9, 1927, allot the lands described in the complaint herein to this plaintiff.

## III.

That the only interest of the Secretary of the Department of Interior in the matter of allotments is to ascertain and follow the policy provided by the Congress of the United States for the making of such allotments.

The judgment in the action of Juana S. Hatchitt, complainant, vs. United States of America, Trustee, Defendant, Equity No. 1208-C, only determines the rule of policy contended for by the Secretary of the Department of Interior at the time of the rendition thereof.

By the judgment in the case of Lee Arenas vs. United States of America, *supra*, that policy has been declared illegal and the duty to issue a trust patent to the plaintiff herein, but for the said judgment in action No. 1208-C, has been declared.

## IV.

The plaintiff hereby makes the judgment entered in the case of Lee Arenas vs. United States of America, *supra*, a part of this opposition and pleads herein that the defendant is estopped to rely upon the doctrine of *res judicata* as an excuse for

the failure to issue a trust patent to plaintiff herein.

Wherefore, plaintiff prays that said motion for summary judgment herein be denied.

Respectfully submitted,

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON.

Dated: May 21, 1945.

[Endorsed]: Filed May 21, 1945. [36]

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Plaintiff in Action No. 4236 filed an Opposition to the Motion for Summary Judgment in said action upon the same grounds as specified above.

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[Title of Court and Causes—Nos. 4235-4236.]

ORDER OF COURT GRANTING MOTION OF  
THE GOVERNMENT, FILED APRIL 5TH,  
1945, FOR A SUMMARY JUDGMENT.

Viola Juanita Hatchitt, a minor, by Juana S. Hatchitt, prochein ami, in case No. 1209-Y Eq., filed her action in this court for a trust allotment patent to lands of the Agua Caliente or Palm Springs Band of Mission Indians of California; and Juana Saturnino Hatchitt, in case No. 1208-Y. Eq., likewise filed her action in this court for a



trust allotment patent to lands of the Agua Caliente or Palm Springs Band of Mission Indians of California. Pursuant to stipulation of the parties thereto, these two cases were consolidated for hearing and tried with the case of *Genevieve P. St. Marie v. United States*, No. 918-Y. Eq., in this court, before the Hon. Leon R. Yankwich, Judge, who, after hearing, argument and briefs of counsel, rendered his Opinion in favor of the Government, pursuant to [38] which Findings of Fact and Conclusions of Law and a Final Decree were duly filed and entered decreeing that the complainant take nothing by her action. Separate Findings of Fact and Conclusions of Law and Final Decrees were entered in 1208-Y. Eq. and 1209-Y. Eq., on August 22nd, 1938, likewise decreeing that the complainants take nothing by their actions 24 F. Supp. 237. These three cases were appealed to the Circuit Court of Appeals for the Ninth Circuit and the judgments of Judge Yankwich were affirmed. 108 F. (2d) 876, C.C.A. 9, 1940. The Supreme Court of the United States denied certiorari for the reason that the petition therefor was filed too late. 311 U.S. 652.

Viola Juanita Hatchitt in 4235 O'C. Civil, and Juana Saturnino Hatchitt in 4236 O'C. Civil, subsequently filed new suits in this court for the same relief claimed in their prior actions in which the decrees have long since become final. In these two latter suits the Government has filed motions for summary judgments relying upon the doctrine of *res judicata*.

In the case of *Lee Arenas v. United States*, No. 1301 O'C. Civil, tried before me, this court, after a trial of the issues involving a similar, if not an identical, state of facts as existed in the *St. Marie* case, *supra*, but in which another Indian was involved and in which the doctrine of *res judicata* did not come into play, came to a different conclusion as to the construction to be placed upon certain federal statutes from that arrived at by the Hon. Leon R. Yankwich, Judge, in the *St. Marie* case, and found in favor of the plaintiff *Lee Arenas* and against the *United States*.

At the argument on the motion of the Government for a summary judgment in each of the cases Nos. 4235 O'C. Civil and 4236 O'C. Civil, counsel for the *Hatchitts*, relying upon the decision in the *Lee Arenas* case, took the position that they should not be bound by the previous ruling of Judge [39] Yankwich in their former cases for the reasons (1) that the doctrine of *res judicata* is not applicable to them or that they come within the exceptions thereto; and (2) that the Attorney General of the *United States* had no authority to interpose the defense of *res judicata*. These positions seem to the court to be untenable.

As to point one, it is alleged by counsel for the plaintiffs that the former judgments, each pleaded by the Government as *res judicata*, were void or at least contrary to law in that each of the findings of fact upon which the judgments were based was erroneous by reason of the construction of the stat-

utes involved or that the findings of fact upon which the judgments were rendered contained in themselves conclusions of law.

Granted that the Bill of Review can still be available in the Federal District court in exceptional cases to vacate or correct final judgments as an exception to the doctrine of *res judicata*, the court is of the opinion that such a remedy is not available under these facts where the judgments are regular on their face. In treating the subject of vacating judgments that have become final *The Cyclopedia of Federal Procedure* (2d Ed.) vol. 8, p. 367, has this to say:

“It has been held that a subsequent decision in another case by the Supreme Court, based on principles which, if applied, would have produced a different result in the original suit, does not show error apparent in the original decree (*Scotten v. Littlefield*, 235 U.S. 407; 59 L.Ed. 289; 35 Sup. Ct. 125).”

See also 22 Fed. Rep. (2d) 143, *Swift v. Parmenter, et al.*, (C. C. A. 8, 1927) setting forth the principles of law as a predicate for a Bill of Review.

The court is of the opinion that the doctrine of *res judicata*, by reason of the final judgments of Judge Yankwich in Nos. 1208-Y. and 1209-Y., both in equity, which were regular on their face, is clearly applicable and that the motions of the Government for summary judgments in these two cases now [40] before the Court must be granted.

Chicot County Drainage District v. Baxter State Bank, et al., 308 U.S. 371, is conclusive authority, in the Court's opinion, for this court's position that *res judicata* is applicable to a judgment based upon a statute which has subsequently been declared unconstitutional in another case; and, *a fortiori*, it is just as binding in a judgment where a court has misinterpreted a statute.

As to point two, *United States v. San Jacinto Tin Company*, 125 U.S. 273; 31 Law Ed. 747, and *United States v. Minor*, 114 U.S. 241; 29 Law Ed. 113, are authority for the proposition of law that the same remedies are available to the Government as a private citizen, and the Court concludes that this plea of *res judicata* is a proper plea to be interposed by the defendant on these motions.

If the decision in the Lee Arenas case should be ultimately sustained in the upper courts and it should then be determined that these two plaintiffs have suffered an injustice by an erroneous interpretation of federal statutes resulting in the entry of final decrees which have long since become final, these final decrees would nevertheless still be binding, and the plaintiffs' remedy would be by an appeal to the Legislature and not to the courts. The doctrine of *res judicata* is a salutary one and a bulwark in the system of American and English jurisprudence of long standing and its integrity should not be undermined or whittled away. It is necessary that there should be a finality to litigation.

Counsel for the Government will prepare a judg-

ment of dismissal in each of the foregoing cases, in accordance with this order, for the signature of the court within ten days, after submitting same to counsel for the plaintiffs for approval as to form.

Dated: Los Angeles, Calif., May 29th, 1945.

(Signed) J. F. T. O'CONNOR,  
U. S. Dist. Judge.

[Endorsed]: Filed May 29, 1945. [41]

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In the District Court of the United States in and  
for the Southern District of California, Central Division.

No. 4235 O'C.—Civil

VIOLA JUANITA HATCHITT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### JUDGMENT

The above-entitled cause came on to be heard before the Honorable J. F. T. O'Connor, United States District Judge, Southern District of California, on the 21st day of May, 1945, on the motion of defendant for summary judgment of dismissal; and

John W. Preston, Oliver O. Clark and David D.

Sallee, Esqs., appearing as counsel for plaintiff, and James A. Murray, Special Assistant to the Attorney General, appearing as counsel for defendant, and the matter having been fully argued by counsel for the respective parties and the motion submitted to the Court; and

It appearing to the Court that all issues raised by the complaint herein have been heretofore determined adversely to the plaintiff by the decree of this Court in the case of Viola J. Hatchitt, minor, by Juana S. Hatchitt, prochein ami, v. United States of America, No. 1209-Y Eq., which decree was affirmed by the Circuit Court of Appeals in and for the Ninth Circuit in the case of St. Marie v. United States of America, reported in 108 F. 2d 876, certiorari denied 311 U. S. 652, petition filed out of [42] time; and

It further appearing that the decree in action No. 1209-Y Eq. became and is a final judgment and is binding and conclusive and res judicata as to all matters of law and fact raised by the complaint herein;

It Is Ordered, Adjudged and Decreed that the motion of defendant for summary judgment of dismissal be granted and the plaintiff take nothing by her complaint on file herein.

Dated: This 1st day of June, 1945.

(Signed) J. F. T. O'CONNOR,  
Judge.

Approved as to form.

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,  
Attorneys for Plaintiff.

Presented by:

EUGENE D. WILLIAMS,  
JAMES A. MURRAY,  
MARVIN J. SONOSKY,  
Special Assistants to the At-  
torney General.

By JAMES A. MURRAY,  
Attorneys for Defendant. [43]

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At a stated term, to-wit: The February Term, A.D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 4th day of June, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable: J. F. T. O'Connor,  
District Judge.

[Title of Court and Causes—Nos. 4235-4236.]

The above-entitled causes coming before the Court for further proceedings at this time; James Murray, Esq., Special Asst. to the Attorney General,

appearing for the Government; and John W. Preston, Esq., appearing for the plaintiffs; C. W. McClain, Court Reporter, being present and reporting the proceedings: Attorney Preston, upon being informed that judgments have been entered in these two cases, moves that said judgments be vacated and not re-entered until the judgment in the case of Lee Arenas vs. United States of America, No. 1321-O'C., Civil, becomes final, or that said plaintiffs be permitted to dismiss their actions at this time. Attorney Murray, having thereupon stated that plaintiffs' motions come too late, and that the summary judgments of dismissal should stand, it is by the Court ordered that the oral motion of Attorney Preston, made at this time, be taken under submission on briefs to be filed 5 x 5 x 2. [44]

Thereafter and on the 11th day of June, 1945, the Court vacated said order and allowed plaintiffs five days within which to file amendments or objections in re the motions for summary judgment in said causes.

Whereupon on the 19th day of June, 1945, plaintiffs filed an Amended Opposition to the Motion for Summary Judgment in each of said action, as follows, to wit:

[Title of Court and Cause in the two consolidated causes.]

Plaintiff hereby repeats the allegations of the opposition to motion for summary judgment on file



herein and, in addition thereto, specifies the following:

I.

That the relation between the United States of America and plaintiff is that of guardian and ward.

II.

That the situation of plaintiff and the said Lee Arenas respecting their right to allotments are identical save and except the existence of the judgment pleaded in defendant's answer. That is to say, that this plaintiff received an allotment at the same time and in the same manner as did Lee Arenas.

III.

That if and when the Arenas judgment becomes final, it will be the bounden duty of the United States of America to refrain from urging the plea of *res judicata* herein or doing any other act that would defeat plaintiff's right to her allotment.

Wherefore, plaintiff urges that action on defendant's plea at this time is premature and that judgment should be withheld until the aforesaid Arenas judgment becomes final.

Dated this 19th day of June, 1945.

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,

Attorneys for Plaintiff. [45]

In the District Court of the United States in and  
for the Southern District of California, Central  
Division.

No. 4236-O'C.—Civil

JUANA SATURNINO HATCHITT,  
Plaintiff,

vs.

UNITED STATES OF AMERICA,  
Defendant.

### JUDGMENT

The above entitled cause came on to be heard before the Honorable J. F. T. O'Connor, United States District Judge, Southern District of California, on the 21st day of May, 1945, on the motion of defendant for summary judgment of dismissal; and

John W. Preston, Oliver O. Clark and David D. Sallee, Esqs., appearing as counsel for plaintiff, and James A. Murray, Special Assistant to the Attorney General, appearing as counsel for defendant, and the matter having been fully argued by counsel for the respective parties and the motion submitted to the Court; and

It appearing to the Court that all issues raised by the complaint herein have been heretofore determined adversely to the plaintiff by the decree of this Court in the case of Juana S. Hatchitt vs. United States of America, No. 1208-Y Eq., which decree was affirmed by the Circuit Court of Appeals in and for the Ninth Circuit in the case of St.

Marie vs. United States of America, reported in 108 F. 2d 876, certiorari denied 311 U. S. 652, petition filed out [46] of time; and

It further appearing that the decree in action No. 1208-Y Eq. became and is a final judgment and is binding and conclusive and res judicata as to all matters of law and fact raised by the complaint, herein;

It Is Ordered, Adjudged and Deereed that the motion of defendant for summary judgment of dismissal be and the same is hereby granted and the plaintiff to take nothing by her complaint on file herein.

Dated: This 20th day of June, 1945.

J. F. T. O'CONNOR,

Judge.

Approved as to form:

JOHN W. PRESTON, OLIVER O. CLARK,

DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,

Presented by:

EUGENE D. WILLIAMS,

JAMES A. MURRAY,

MARVIN J. SONOSKY,

Special Assistants to the At-  
torney General.

By JAMES A. MURRAY,

Attorneys for Defendant.

[Endorsed]: Filed June 20, 1945. [47]

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 4235-O'C.—Civil

VIOLA JUANITA HATCHITT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### JUDGMENT

The above-entitled cause came on to be heard before the Honorable J. F. T. O'Connor, United States District Judge, Southern District of California, on the 21st day of May, 1945, on the motion of defendant for summary judgment of dismissal; and

John W. Preston, Oliver O. Clark and David D. Sallee, Esqs., appearing as counsel for plaintiff, and James A. Murray, Special Assistant to the Attorney General, appearing as counsel for defendant, and the matter having been fully argued by counsel for the respective parties and the motion submitted to the Court; and

It appearing to the Court that all issues raised by the complaint herein have been heretofore determined adversely to the plaintiff by the decree of this Court in the case of Viola J. Hatchitt, minor, by Juana S. Hatchitt, *prochein ami*, vs. United States of America, No. 1209-Y Eq., which decree was affirmed by the Circuit Court of Appeals in

and for the Ninth Circuit in the case of *St. Marie vs. United States of America*, reported [48] in 108 F. 2d 876, certiorari denied 311 U. S. 652, petition filed out of time; and

It further appearing that the decree in action No. 1209-Y Eq. became and is a final judgment and is binding and conclusive and *res judicata* as to all matters of law and fact raised by the complaint herein;

It Is Ordered, Adjudged and Decreed that the motion of defendant for summary judgment of dismissal be and the same is hereby granted and the plaintiff to take nothing by her complaint on file herein.

Dated: This 20th day of June, 1945.

(Signed) J. F. T. O'CONNOR,  
Judge.

Approved as to form:

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,  
Attorneys for Plaintiff.

Presented by:

EUGENE D. WILLIAMS,  
JAMES A. MURRAY,  
MARVIN J. SONOSKY,

Special Assistants to the At-  
torney General.

By JAMES A. MURRAY,  
Attorneys for Defendant.

[Endorsed]: Filed June 20, 1945. [49]

[Title of Court and Cause—No. 4235.]

### NOTICE OF APPEAL

To the Clerk of the Above Entitled Court:

You Will Please Take Notice that the plaintiff hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment therein entered in the said District Court of the United States in and for the Southern District of California, Central Division, on the 20th day of June, 1945, in favor of the defendant and against the plaintiff and from the whole thereof.

Dated this 29th day of August, 1945.

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,  
Attorneys for Plaintiff.

[Endorsed]: Filed September 11, 1945. [50]

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[Title of Court and Cause—No. 4236.]

### NOTICE OF APPEAL

To the Clerk of the Above Entitled Court:

You Will Please Take Notice that the plaintiff hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment therein entered in the said District Court of the United States in and for the Southern District of California, Central Division, on the 20th day of

June, 1945, in favor of the defendant and against the plaintiff and from the whole thereof.

Dated this 29th day of August, 1945.

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,  
Attorneys for Plaintiff.

[Endorsed]: Filed September 11, 1945. [51]

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On said 11th day of September, 1945, plaintiffs in each of the two above mentioned causes duly filed with the Clerk of the District Court in which said actions were pending, good and sufficient bonds upon appeal as required by Rule No. 73(c), Rules of Civil Procedure. [52]

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[Title of Court and Cause—No. 4235.]

EXTENSION OF TIME FOR DOCKETING  
AND RECORD ON APPEAL

(F.R.C.P. 73(g) )

Good cause appearing therefor, It Is Hereby Ordered that plaintiff and appellant may have to and including December 5, 1945, within which to docket its appeal and the record on appeal in the above entitled cause in the Circuit Court of Appeals for the Ninth Circuit.

Dated: This 12th day of October, 1945.

J. F. T. O'CONNOR

Judge

Presented by:

JOHN W. PRESTON

OLIVER O. CLARK

DAVID D. SALLEE

ROBERT A. SMITH

By JOHN W. PRESTON

Attorneys for Appellant [53]

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[Title of Court and Cause—No. 4236.]

EXTENSION OF TIME FOR DOCKETING  
AND RECORD ON APPEAL

(F.R.C.P. 73(g) )

Good cause appearing therefor, It Is Hereby Ordered that plaintiff and appellant may have to and including December 5, 1945, within which to docket its appeal and the record on appeal in the above entitled cause in the Circuit Court of Appeals for the Ninth Circuit.

Dated: This 12th day of October, 1945.

J. F. T. O'CONNOR

Judge

Presented by:

JOHN W. PRESTON

OLIVER O. CLARK

DAVID D. SALLEE

ROBERT A. SMITH

By JOHN W. PRESTON

Attorneys for Plaintiff and  
Appellant [54]



[Title of Court and Cause—Nos. 4235-4236.]

STIPULATION CONSOLIDATING  
APPEALS AND RECORD

Whereas, the two above entitled causes arose from the same transaction and were tried together and submitted for decision on the same evidence, and

Whereas, the judgment roll, evidence and proceedings taken in the case of Lee Arenas vs. United States of America, action No. 1321 O'C Civil, in the above entitled Court, were also received in evidence as a part of the proceedings on the trial of each of said causes, and

Whereas, a notice of appeal to the Circuit Court of Appeals for the Ninth Circuit, has been filed in each of the three above [55] mentioned causes.

Now, Therefore, the respective parties to said appeals do hereby stipulate as follows:

(1) That the appeals in the cases of Viola Juanita Hatchitt vs. United States of America, No. 4235 O'C Civil, and Juana Saturnino Hatchitt vs. United States of America, No. 4236 O'C Civil, may be heard upon the same record and that an order of the trial court may be made to this effect.

(2) That the record on appeal in the case of Lee Arenas v. United States of America, No. 1321 O'C Civil, when completed, may be considered a part of the record on appeal in the other two causes in the same manner and to the same extent as it

set up in extenso in the record therein and that an order of the trial court may be made to this effect.

Dated this 1st day of December, 1945.

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,  
Attorneys for Plaintiff.

EUGENE D. WILLIAMS, JAMES A.  
MURRAY, MARVIN J. SONOSKY,

Special Assistants to the Attorney General

By JAMES A. MURRAY,  
Attorneys for Defendant United States of  
America [56]

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[Title of Court and Causes—Nos. 4235-4236.]

ORDER CONSOLIDATING APPEALS AND  
DIRECTING PREPARATION OF THE  
RECORD THEREON

Good cause appearing therefor, and upon stipulation of the parties thereto,

It Is Hereby Ordered:

1. That the appeals to the Circuit Court of Appeals for the Ninth Circuit in the above entitled actions be consolidated for hearing and that the record for such hearing be prepared in a single transcript.

2. That the record on appeal in the case of Lee Arenas vs. United States of America, being action No. 1321 O'C Civil, in the above entitled Court, now in the course of preparation, may be considered a part of the record on these appeals by reference and without the [57] necessity of reproducing the same herein.

Dated this 3rd day of September, 1945.

J. F. T. O'CONNOR

Judge [58]

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[Title of Court and Causes—Nos. 4235-4236.]

## STIPULATION AS TO AGREED STATEMENT OF THE CASE FOR USE ON APPEAL

The foregoing statement is hereby agreed to and approved as a full and correct "Statement of the Case" to be used on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, under the provisions of Rule 76 of the Rules of Civil Procedure.

It is further stipulated and agreed that said Agreed Statement shall constitute and be used as the record on appeal in each of said two named cases, and that, subject to the approval of said Appellate Court, said two cases may be consolidated on said appeal, and be heard and decided by said Appellate Court on the one record [59] on appeal.

Dated this 3rd day of December, 1945.

EUGENE D. WILLIAMS  
JAMES A. MURRAY  
MARVIN J. SONOSKY

By JAMES A. MURRAY  
Attorneys for Defendant  
United States of America

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON.

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The foregoing Statement of the Case is hereby approved.

Dated this 3rd day of December, 1945.

J. F. T. O'CONNOR  
Judge [60]

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[Title of Court and Causes—Nos. 4235-4236.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 60, inclusive, contain the original Agreed Statement of the Case for use on Appeal, under Rule 76 of the Rules of Civil Procedure which constitutes the record on appeals to

the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$1.70 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 4th day of December, 1945.

[Seal]                      EDMUND L. SMITH,  
Clerk

By    THEODORE HOCKE  
Chief Deputy Clerk

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[Endorsed]: No. 11205. United States Circuit Court of Appeals for the Ninth Circuit. Viola Juanita Hatchitt, Appellant, vs. United States of America, Appellee. Juana Saturnino Hatchitt, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Southern District of California, Central Division.

Filed December 6, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
For the Ninth Circuit

No. 11205

VIOLA JUANITA HATCHITT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUANA SATURNINO HATCHITT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANTS' STATEMENT OF POINTS TO  
BE RELIED UPON AND DESIGNATION  
OF THE RECORD TO BE PRINTED

Comes now the appellant in each of the above entitled causes and hereby designates the following points upon which they will rely upon in each of the appeals herein:

I

That the District Court erred in not sustaining plaintiff's opposition to the motion for summary judgment on the ground that the United States of America, being the guardian of said appellants and each of them, is estopped to rely upon the doctrine *res judicata* as to them.

II

That the District Court erred in not granting appellants' motion for a stay of proceedings until the cause pending in action No. 1321, entitled Lee Arenas vs. United States of America, was terminated by final judgment.

Appellants further state that they believe and consider that the entire Agreed Statement of the Case certified by the trial court is necessary for the consideration of the points upon which said Appellants intend to rely in this Court, and they desire to have said entire Agreed Statement printed herein.

Dated this 3rd day of December, 1945.

JOHN W. PRESTON, OLIVER O. CLARK,  
DAVID D. SALLEE, ROBERT A. SMITH.

By JOHN W. PRESTON,  
Attorneys for Appellants

Received copy of the above and foregoing Statement and Designation, this 3rd day of December, 1945.

EUGENE D. WILLIAMS, JAMES A.  
MURRAY, MARVIN J. SONOSKY,

By JAMES A. MURRAY  
Attorneys for Appellee

[Endorsed]: Filed December 6, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Causes.]

VERIFIED APPLICATION FOR ORDER FOR  
CONSOLIDATION OF APPEALS AND  
CONSENT OF APPELLEE THERETO

United States of America,  
State of California,  
County of Los Angeles—ss.

John W. Preston, being first duly sworn, on oath deposes and says:

That he is one of the attorneys and counsel for the Appellants in the above entitled two causes; that he was one of the attorneys for said Appellants, and each of them, in the trial court, namely, In the District Court of the United States, in and for the Southern District of California, Central Division, and represented said Appellants (as plaintiffs in said trial court) during all of the proceedings in said court.

Pursuant to an order of said trial court, said two causes were consolidated and tried together therein, and the evidence introduced was applicable to and considered by said court in connection with each and both of said two causes.

In each of the above-entitled causes the United States of America was Defendant, and these Appellants were, respectively, Plaintiffs therein. Each of said plaintiffs is a duly enrolled and recognized member of the Palm Springs or Agua Caliente Band of Mission Indians of California, and each of said actions was brought for the following purposes, to wit: For adjudications: (a) that each is a



duly enrolled and recognized member of said Band of Indians; (b) that each was allotted and reallocated in severalty the lands described in her complaint and that she is entitled to an allotment trust patent thereto; (c) that the trust period of twenty-five years provided in the Mission Indian Act shall begin to run from the 21st day of June, 1923; and (d) that as to each a copy of the decree of the Court be certified to the Secretary of the Interior of the United States of America.

The issues were the same in each of the two causes. The facts found and the conclusions arrived at by the trial court as to the issues involved were the same in each of said two causes, and the final judgments for defendant made and entered by the trial court were the same in each of said causes.

The certified record on appeal herein is in the form of an Agreed Statement of the Case under Rule 76 of the Rules of Civil Procedure, and relates to and covers all of said two causes. The Stipulation concerning said Agreed Statement (with the approval of the trial Judge) provides, among other things, as follows:

“It is further stipulated and agreed that said agreed statement shall constitute and be used as the record on appeal in each of said two named cases, and that, subject to the approval of said Appellate Court, said two cases may be consolidated on said appeal, and be heard and decided by said Appellate Court on the one record on appeal.”

Wherefore, affiant, for and on behalf of said

Appellants, hereby applies for and requests an order of this Court to the effect that said two causes shall be consolidated for hearing on this appeal, and that said appeals in said two causes shall be heard and decided upon the one record which has been filed herein.

(Signed) JOHN W. PRESTON

Subscribed and sworn to before me this 1st day of December, 1945.

[Seal]                RETTA C. HARRISON,  
Notary Public in and for the County and State.

It Is So Ordered:

FRANCIS A. GARRECHT

United States Circuit Judge

Received copy of the above and foregoing affidavit and application, this 3rd day of December, 1945, and the Appellee hereby consents to the making and entry of the order therein requested.

EUGENE D. WILLIAMS

JAMES A. MURRAY

MARVIN J. SONOSKY

By JAMES A. MURRAY

Attorneys for Appellee

[Endorsed]: Filed December 6, 1945. Paul P. O'Brien, Clerk.